

General Information

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Program Description (VCP, brownfields, or related)

Brownfields definition: A parcel of property where commercial, industrial, or agricultural use may have contaminated the site with a hazardous substance, thereby complicating prospects for expansion, redevelopment, or reuse.

Program titles:

- Arkansas Brownfields Program
- Arkansas Brownfields Revolving Loan Fund (RLF) Program

Liability relief provisions: The Implementing Agreement (IA) establishes cleanup liabilities and obligations for the abandoned site.

The brownfields participant is not relieved of any liability for contamination later caused by the participant, or contamination not intended to be addressed in the IA, after acquisition of legal title to the brownfields site.

A prospective purchaser of an abandoned site will not be responsible for paying any fines or penalties levied against any person responsible for contamination on the abandoned site prior to the IA with ADEQ.

Liability protection for the purchaser is based upon a full disclosure of environmental conditions at the property via the Comprehensive Site Assessment. Should new information become available after project completion, which was intentionally withheld by the purchaser, the release of liability is null and void. However, if the purchaser had no knowledge of this new information, and the new information relates to a portion of the property addressed by the Comprehensive Site Assessment and Agreement, it will become the responsibility of ADEQ to address the issue, and take action, if necessary, to remediate the problem.

The Brownfields Program is a voluntary program and can therefore be “backed out of” at any point during the process. But if the participant holds title to the property and should fail to complete the remedial requirements explained in the IA, he/she will continue to hold liability for any past contamination found on the site. Also, if the environmental conditions are somehow worsened by the program participant during the project, ADEQ reserves the right to enforce the agreement and require the participant to abate any threat to human health and/or the environment which they caused or exacerbated.

Financial incentives (grants, loans, tax provisions, etc.): Arkansas Brownfields Revolving Loan Fund (RLF) Program:

This low-interest funding is available for loans to Brownfields Program participants for cleanup costs based on an ADEQ-approved Comprehensive Site Assessment. Individual loans will be available for up to \$500,000 each. Although assessment costs may be considered eligible in the future, loans can currently be approved for purposes of cleanup of non-petroleum, petroleum-only, and mixed petroleum substances.

Legislative or program site eligibility requirements:

The Arkansas Brownfields Program:

- Eligible applicants include individuals, companies, or lenders who do not hold (or have held) title to the property and are not responsible for contamination at the site.
- Eligible properties include abandoned or underutilized industrial, commercial, or agricultural properties for which no responsible party can reasonably be pursued for cleanup.

Arkansas RLF Program:

- Eligible applicants include private, public, and nonprofit organizations which are not responsible for or have not contributed to the contamination existing at the time of the application.
- Eligible activities include those which involve the cleanup or assessment of a contaminated site.
- Ineligible activities include examples of land acquisition, construction of a new building or infrastructure, marketing, ordinary operating expenses, site maintenance, and job training.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Arkansas RLF (see previous section)

Tax incentives (abatement, credits, etc.): No information available

Arkansas

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Program Elements

Technical Elements

Methods/standards/controls: The state's cleanup standards are based on a risk management process. No single set of soil cleanup levels has been implemented and site-specific factors are considered when developing action levels. Cleanup goals may be met by reaching background metals concentrations, consulting EPA Region 6 Human Health Media Specific Screening Levels, performing a traditional human health risk assessment, or a combination of all three options when appropriate.

Site-specific cleanup standards are established in IAs. Ecological risk assessment decisions are based on sediment screening levels developed by the National Oceanographic and Atmospheric Administration. Factors in determining the appropriate action levels for state, voluntary, and Resource Conservation Recovery Act (RCRA) cleanups include reasonably anticipated future land use, the use of engineering or institutional controls, human and/or ecological receptors, water quality criteria, background levels, and Maximum Contamination Level/Maximum Contaminant Level Goals (MCLs/MCLGs). Numerical risk goals range from 10^{-4} to 10^{-6} for carcinogens and a Hazard Index of 1 for non-carcinogens. Depending on the remaining risk, land use restrictions may be specified in a site's IA and recorded in the property deed. Under the Voluntary Cleanup Law, an IA must be filed with the clerk of the circuit court in the county in which the site is located. The IA is transferable to all subsequent owners, and the land use designated therein cannot be changed without notifying ADEQ, which will revisit the associated risk management decision.

Contaminants covered/excluded: The Arkansas RLF establishes categories of funding in connection to the types of contaminants covered or excluded:

- Category A—Funds may be used for environmental remediation activities at sites contaminated by non-petroleum hazardous substances (except in cases of co-mingled petroleum/non-petroleum wastes).
- Category B—Funds may be used for environmental remediation activities to address petroleum and/or non-petroleum contamination.
- Category C—Funds may be used for environmental site assessment and remediation activities at petroleum and/or non-petroleum contaminated sites.

Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners): Arkansas does not have a system to monitor or enforce long-term stewardship and institutional controls. Institutional controls are listed in the Arkansas Record of Brownfields Projects, which is available on the Web site.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: December 2000

Costs to enter program or fees for service: A fee schedule has not been established for the Brownfields Program.

Funding source for administrative costs and staff: Funding for staff and administration comes from federal grants/cooperative agreements.

Cleanup Activities

Sites currently in VCP: 34 sites currently in the Brownfields Program.

Sites completed under VCP: 9 brownfields sites completed as of August 6, 2004.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Arkansas Brownfields Program benefits to the participant include defining legal and financial environmental liabilities early in the process and obtaining a liability release for past contamination addressed in the environmental site assessment.

Public Participation

Public participation requirements (notice, comment periods, etc.): State statutes and regulations provide requirements for public notice, provisions for public comment, hearings/meetings, and document availability for all sites in the state, voluntary, and brownfields cleanup programs.

Public participation activities (hearing, meetings, etc.): Public meetings and/or fact sheets are provided prior to major milestones on cleanup projects.

Statutory Authorities

- *Arkansas Voluntary Clean-Up Act*, Arkansas Code Annotated §§8–7–1101 et seq.
- *Arkansas Hazardous Waste Management Act*, Arkansas Code Annotated §§8–7–201 et seq.
- *Arkansas Remedial Action Trust Fund Act*, Arkansas Code Annotated §§8–7–501 et seq.
- APC&EC Regulation 29 Brownfields Redevelopment.

General Information

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Program Description (VCP, brownfields, or related)

The Louisiana Voluntary Remediation Program (VRP) provides a mechanism by which property owners (or potential owners) or others can clean up contaminated properties and receive a release of liability for further cleanup of historical contamination at a site. This release of liability flows to future owners of the property as well.

Through the VRP DEQ hopes to provide administrative, technical, and legal incentives in order to encourage the redevelopment and reuse of brownfields properties.

Brownfields definition: Real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

Program titles:

- Voluntary Remediation Program/Brownfields Initiative
- Louisiana Risk Evaluation/Corrective Action Program (RECAP)
- Louisiana Brownfields Cleanup Revolving Loan Fund (RLF)

Liability relief provisions: In 1995, the Louisiana Legislature passed Act 1092, known as the Voluntary Investigation and Remedial Action law, which allows property owners and other persons who clean up properties to risk-based standards (see Louisiana RECAP) to get a Certificate of Completion (COC) from DEQ. With this certificate, the property owner and any subsequent owners of the property are released from further liability under state law for the past contamination at the site. In effect, the certificate allows potential buyers to acquire and remediate brownfields properties without fear of state Superfund liability.

La. R.S. 30:2285.1. Voluntary remedial actions; liability exemption

- Any person who is not otherwise a responsible person will not be liable for the discharge or disposal or threatened discharge or disposal of the hazardous substance or waste if the person undertakes and

completes a remedial action to remove or remedy discharges or disposals and threatened discharges or disposals of hazardous substances and wastes at a property in accordance with a voluntary remedial action plan approved in advance by the DEQ following public notice and the opportunity for a public hearing in the affected community.

The exemption from liability also applies to discharges or disposals or threatened discharges or disposals of hazardous substances and hazardous wastes at the identified property that are not required to be removed or remedied by the approved voluntary remedial action plan if the requirements of R.S. 30:2286 are met.

Exemption from liability does not apply to the following:

- Any person who undertakes or completes a voluntary remedial action plan which he would otherwise have under any federal rule or regulation.
- The liability of any person with respect to damage caused to third parties.

La. R.S. 30:2287. Performance liability: Provides that persons specified in R.S. 30:2288 or R.S. 30:2288.1(C) will not be liable for aggravating or contributing to any discharge or disposal or threatened discharge or disposal identified in an approved voluntary remedial action plan for the purpose of R.S. 30:2289(1) as a result of their performance of the remedial actions required in accordance with the plan and the direction of the secretary. There is no exemption for any liability for failure to perform the work required by the voluntary remedial action plan in a workman-like manner and in accordance with generally accepted standards of performance and operation applicable to such remedial work.

La. R.S. 30:288. Persons exempt from liability: Provides that in addition to persons who undertake and complete remedial actions, and subject to the provisions of R.S. 30:2289, the exemption from liability applies to the following persons when the secretary issues the certificate of completion of remedial actions:

- The owner of the identified property, if the owner is not responsible for any discharge or disposal or threatened discharge or disposal identified in the approved voluntary remedial action plan.
- A person who acquires or develops the identified property.
- A successor or assign of any person to whom the liability exemption applies.

Any person who provides financing for the implementation of a remedial action plan or for the development of the identified property in accordance with the applicable use restrictions after completion and acceptance of the plan will not be liable for any damages, costs, or penalties unless that person is considered to be a responsible person under the provisions of the statute.

La. R.S. 30:2288.1. Voluntary remedial actions by responsible persons: A responsible person who undertakes and completes an approved remedial action

Louisiana

plan will be exempt from liability if the remedial actions are undertaken and completed in accordance with the statute.

The parties to whom the exemption from liability is applied once the secretary issues a Certificate of Completion are:

- A person who acquires the identified immovable property after approval of the voluntary remedial action plan.
- A successor or assign of a person to whom the liability exemption applies under this subsection.

Any person who provides financing for the implementation of a remedial action plan or for the development of the identified immovable property in accordance with the applicable use restrictions after completion and acceptance of the plan will not be liable for any damages, costs, or penalties unless such person is considered to be a responsible person under the provisions of the statute.

La. R.S. 30:2289. Persons not exempt from liability:

- A person who aggravates or contributes to a discharge or disposal or threatened discharge or disposal that was not remedied under an approved voluntary remedial action plan.
- A person who was a responsible person under the statute for a discharge or disposal or threatened discharge or disposal identified in the approved voluntary remedial action plan before taking an action that would have made the person subject to the exemptions under R.S. 30:2288 or R.S. 30:2288.1.
- A person who obtains approval of a voluntary remedial action plan by fraud or misrepresentation, or by knowingly failing to disclose material information, or who knows that approval was so obtained before taking an action that would have made the person subject to the exemptions from liability under R.S. 30:2288 or R.S. 30:2288.1.

Financial incentives (grants, loans, tax provisions, etc.): Louisiana Brownfields Cleanup Revolving Loan Fund. Pilot programs have their own incentives.

Legislative or program site eligibility requirements: All properties are eligible for participation in the VRP, except the following:

- Sites listed on the National Priorities List (NPL) or formally proposed to be listed.
- Permitted hazardous waste management units (HWMU), however, if the HWMU is located within a larger site, then only that portion of the site inside the HWMU is ineligible.
- Trust-fund-eligible underground storage tank sites.
- Sites that have pending, unresolved federal environmental enforcement actions (not simply cost-recovery actions) that are related to the proposed voluntary remediation.

All persons are eligible except that only non-responsible persons (as defined in LAC 33:VI.903) are eligible to perform voluntary remedial actions, using institutional controls.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): Louisiana RLF.

Tax incentives (abatements, credits, etc.): Louisiana taxpayers are eligible to receive tax credits to remediate state-certified brownfield sites under legislation (S.B. 322) which became effective on July 1, 2005. Each taxpayer is eligible to receive a 15 percent tax credit of the total investment to complete a remedial investigation and a 25 percent tax credit of the total investment made to complete a voluntary remediation action. The legislation authorizes a 10-year carry forward of the credit but prohibits the amount of the tax credit applied by a taxpayer from exceeding the amount of taxes due in a taxable period. The bill prohibits the party or landowner responsible for contamination from applying for the credit. Tax credits also will not be issued if a taxpayer terminates an investigation or remediation.

The text of the Louisiana bill granting tax credits for remediating certified brownfields sites is available at: <http://www.legis.state.la.us>.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Program Elements

Technical Elements

Methods/standards/controls: 10^{-4} to 10^{-6} and Hazard Index of 1; three tiers of Management Options under RECAP (a risk-based system in Louisiana).

Contaminants covered/excluded: No restrictions based on contaminants; petroleum, asbestos, lead paint, polychlorinated biphenyls (PCBs) all OK.

Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners: Use restrictions for partial voluntary remedial actions; tracking is through the general site management database.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: October 2004

Costs to enter program or fees for service: \$500. Applicant must reimburse DEQ for the actual direct costs of oversight.

Funding source for administrative costs and staff: EPA grants (90%) and state cleanup fund (10%).

Cleanup Activities

Sites currently in VRP: Active: 36, Withdrew: 2.

Sites completed under VRP: COC issued: 8, No Further Action (NFA) letter issued: 2.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): No information available

Public Participation

Public participation requirements (notice, comment periods, etc.): After a satisfactory review, the Voluntary Remediation Application is accepted for public review and the Voluntary Remedial Action Plan must undergo 30-day public notice and comment period. The participant must place this public notice in the local newspaper and must also provide a direct notice of the plan to adjacent landowners by certified mail.

La. R.S. 30:2286. Partial remedial action plans: Provides that the owners of land subject to a partial remediation will impose use restrictions on the future use of the property as may be determined by the secretary to be necessary to prevent a significant threat to public health, safety, and welfare and to the environment. No land may be partially remediated unless such restrictions are imposed and recorded as stipulated in the statute. The provision states that the secretary shall determine the use restrictions and may conduct public hearings for the purpose of determining the reasonableness and appropriateness of such restrictions in the parish where the land is located.

LAC33:VI §911 (C),(D),(E), and (F) detail the requirements for public review, public notice, public hearing, and comment.

Public participation activities (hearings, meetings, etc.):
No information available

Statutory Authorities

- *Louisiana Voluntary Investigation and Remedial Action (VIRA) statute* (La. R.S. 30:2285–2290).
- *Louisiana Voluntary Remediation Regulations* (LAC 33:VI.Chapter).

New Mexico

General Information

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Program Description (VCP, brownfields, or related)

On July 15, 1999, the New Mexico Environment Department (NMED or department) introduced the Voluntary Remediation Program (VRP), intended to promote the voluntary cleanup of contaminated properties. The VRP is intended to encourage redevelopment of contaminated sites (i.e., brownfields) by providing a streamlined, non-punitive remediation process.

Brownfields definition: Abandoned, idled, or underutilized industrial or commercial sites, where expansion or reuse is complicated by real or perceived environmental contamination. Although, inner city images may come to mind, in a largely rural state such as New Mexico, many sites meeting this definition are in rural locations.

Program titles: The VRP is part of the Remediation Oversight Section of the Ground Water Quality Bureau.

Liability relief provisions: Secretary issues a certificate of completion or a conditional Certificate of Completion (COC) for a site, and provides a Covenant Not to Sue (CNTS) to a purchaser or prospective purchaser of the site that did not contribute to the site contamination, for any direct liability, including future liability for claims based upon the contamination covered by the agreement and over which the department has authority. Except as may be provided under federal law or as may be agreed to by a federal government entity, the CNTS shall not release or otherwise apply to claims by the federal government for claims based on federal law. Except as may be agreed to by another department or agency of the state, the CNTS shall not release or otherwise apply to claims of any other office, department or agency of the state. Except as may be agreed to by a third party, the CNTS shall not release or otherwise affect a person's liability to third parties. Liability protection for lenders exists.

Financial incentives (grants, loans, tax provisions, etc.): Municipality-owned brownfields eligible for low interest loans from Clean Water State Revolving Fund. EPA-capitalized Brownfields Cleanup Revolving Loan Fund (RLF) makes low-interest loans available to developers and municipalities for site cleanup activities. Targeted Brownfields Assessment (TBA) funds available to NMED to conduct Phase I and II assessments at municipally-owned sites.

Legislative or program site eligibility requirements:

To be eligible for a voluntary remediation agreement an applicant must: 1) own the site; 2) operate a facility located on the site; 3) be a prospective owner of the site; or 4) be a prospective operator of a facility at the site. If the applicant is not the site owner, permission must be granted in writing by the site owner for site to be entered into the VRP.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): No information available

Tax incentives (abatements, credits, etc.): No information available

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Program Elements

Technical Elements

Methods/standards/controls: Risk-Based Corrective Action (RBCA)-like process in place, applicants chose from statewide soil guidelines, background concentrations, or a site specific RBCA-like process. State has developed a "look up" process for soil contaminants.

Contaminants covered/excluded: Does not restrict on the basis of contaminants.

Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners): Regulations allow use of post completion monitoring, engineering controls, remediation systems, post closure care, or an affirmation of future non residential land use.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA:
December 1999

Costs to enter program or fees for service: \$1,000 application fee, and payment to NMED for oversight charges at the rate of \$65/hour.

Funding source for administrative costs and staff: EPA Grant.

Cleanup Activities

Sites currently in VCP: 31 active
Sites completed under VCP: 21 closed
Benefits (incentives to participate in the VCP, covenants not to sue, etc.): No information available

Public Participation

Public participation requirements (notice, comment periods, etc.): Before the voluntary remediation agreement becomes finalized, the applicant must: 1) make the proposed voluntary remediation agreement and preliminary work plan available for public inspection within ten days of the receipt of the conditional eligibility determination from NMED; and 2) notify the following entities and advise them of the proposed voluntary remediation agreement, the location where the proposed agreement and work plan can be reviewed, and the opportunity to submit comments to NMED: (a) any governmental agency potentially affected by the proposed agreement, (b) those parties that have requested notification, (c) the general public by posting a notice at the site, and by publishing a notice in a newspaper of general circulation in the state and a newspaper published in the area where the site is located (in the legal advertisements section of the newspaper, and if NMED determines, in both English and Spanish). Must include in the notice: name, location, description of the remediation activities, address to submit comments, address, and phone for questions.

Public participation activities (hearing, meetings, etc.): The secretary shall provide a comment period of at least 30 calendar days following publication of the newspaper notice, during which any interested person may submit a request for public meeting. A public meeting will be held at the applicant's expense if the secretary determines that there is significant public interest. If a public meeting is held, the applicant must, at least 10 days before the meeting, mail a notice to all persons who have submitted written comments or a request for public meeting, and publish the notice in a newspaper of general circulation in the state and a newspaper published in the local area.

Statutory Authorities

- NMSA 1978, §74-4G-1 *et seq*, the *Voluntary Remediation Act*.
- New Mexico Voluntary Remediation Regulations (20.6.3 NMAC).

Oklahoma

General Information

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Program Description VCP, brownfields, or related)

The Voluntary Cleanup and Brownfields programs provide a means for private parties and government entities to voluntarily investigate and if warranted, clean up properties that may be contaminated with hazardous wastes. The Voluntary Cleanup Program (VCP) utilizes an informal, negotiated process for site activities that includes a Memorandum of Agreement (MOA) and Consent Order for Site Characterization as well as a Consent Order for Remediation. The formal Brownfields Program provides specific state liability relief and protects the property from federal Superfund actions.

Brownfields definition: Abandoned, idled, or underused industrial or commercial facility or other real property at which expansion or redevelopment of the real property is complicated by pollution.

Program titles:

- Voluntary Cleanup Program
- Brownfields Redevelopment Program

Liability relief provisions: For completed brownfields actions, the DEQ is prohibited from assessing administrative penalties or pursuing civil action associated with the contamination that is the subject of a consent order if the participant is in compliance with the consent order for site characterization or remediation.

For completed brownfields actions, once the Certificate of Completion (COC) or Certificate of No Action Necessary has been issued, DEQ is prohibited from assessing administrative penalties or pursuing civil actions associated with the contamination that was the subject of the consent order against any lender, lessee, or successor or assign if that person is in compliance with any post-certification conditions or requirements as specified in the consent order, Certificate of No Action Necessary, or COC.

If the applicant knowingly submits false or materially misleading information, the consent order, COC, or Certificate of No Action will be voidable, and the offending party may be subject to administrative, civil, or criminal action.

An applicant to whom a Brownfields COC or a Certificate of No Action Necessary has been issued and the applicant's lenders, lessees, or successors or assigns are not subject to civil liability with regard to the remedial actions taken by the applicant for environmental contamination caused by pollution as required by the consent order if the remedial action is not performed in a reckless or negligent manner.

In cases where an applicant conducts a voluntary brownfields remediation in conjunction with a party responsible for the contamination, the responsible party is also released from liability to the same extent as the applicant.

Release from liability does not apply to: 1) any environmental contamination and consequences thereof that the applicant causes or has caused outside the scope of the consent order or the certificate issued by the DEQ; 2) any contamination caused or resulting from any subsequent redevelopment of the property; 3) existing contamination caused by pollution not addressed prior to issuance of the COC or the Certificate of No Action Necessary; or 4) any person responsible for contamination who has not participated in the voluntary remediation.

Financial incentives (grants, loans, tax provisions, etc.):

- Brownfields projects in urban areas that have, or have submitted an application for, a storm-water discharge permit may be eligible for the Clean Water State Revolving Fund (CWSRF) administered by the Oklahoma Water Resources Board.
- Oklahoma Quality Jobs Act provides quarterly incentive payments for 10 years to firms who locate their principle business on a minimum 10-acre site that qualifies as a National Priorities List (NPL) site, a Superfund removal site, an official Superfund deferral site, or a state voluntary cleanup/brownfields site.
- Brownfields Cleanup Revolving Loan Fund (BCRLF) is available and provides low interest loans to clean up contaminated properties.

Legislative or program site eligibility requirements for Brownfields Program:

Ineligible parties are those who: 1) are responsible for corrective action on the real property under an EPA order or agreement; 2) are not in substantial compliance with a final state, federal, or court order relating to the management of regulated substances; or 3) demonstrate a pattern of uncorrected noncompliance.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): DEQ provides brownfields Targeted Site Assessments to public entities and nonprofit groups. Low interest loan programs are available for cleanup. Public and private entities may obtain low interest loans from the BCRLF. Also, municipalities may be eligible to receive CWSRF for the remediation of brownfields sites if contamination of the sites potentially impacts water quality.

Tax incentives (abatements, credits, etc.): Oklahoma Sales Tax Code exempts sales tax on machinery, fuel, chemicals, and equipment used in cleanup projects.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): DEQ provides technical assistance to parties who wish to clean up and redevelop contaminated properties. Staff members have extensive experience in the cleanup and redevelopment of brownfields sites and can provide guidance to potential program participants.

Program Elements

Technical Elements

Methods/standards/controls: Risk-Based Corrective Action (RBCA)-type processes in place. VCP and Brownfields Programs feature a risk-based system based on the proposed future use of the site to determine if cleanup is needed and if so, provide cleanup goals for the chemicals of concern. The DEQ uses a 3-tiered approach: 1) sampling data is compared to screening levels; 2) if data is higher than screening levels, state will generate conservative default cleanup levels using EPA Risk Assessment Guidelines for Superfund (RAGS)-based methodology; or 3) applicants may choose to do a risk assessment with state oversight to determine adequate cleanup goals.

Contaminants covered/excluded: The State Legislature recently broadened the definition of brownfields sites by opening it up to all sites affected by pollution. However, the VCP will refer applicants to other agencies if the jurisdictional issues indicate that another agency could better serve the applicant.

Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners): Institutional controls are allowed if they adequately protect the public. Recent legislation gave the DEQ broader power to implement land use controls. DEQ is working to implement an institutional control database to accurately track the institutional controls in the state.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: April 1999

Costs to enter program or fees for service: DEQ can require reimbursement of its oversight costs from the participant. Estimated oversight costs are negotiated in the consent orders and the participant is required to set up an account with DEQ to cover oversight expenses.

Funding source for administrative costs and staff: General administrative costs are currently funded by EPA grants.

Cleanup Activities

Sites currently in VCP and Brownfields Program: 115

Sites completed under VCP: 4 Brownfields Certificates of No Action Necessary have been issued. 7 Brownfields Certificates of Completion have been issued. 196 sites have been closed under the VCP.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): No information available

Public Participation

Public participation requirements (notice, comment periods, etc.): Brownfields Program requires notice to the public of the availability of the project's Proposed Plan for public review and a 30-day public comment period. If someone from the public requests a meeting to discuss the plan, the DEQ may hold a public meeting. Notice of the meeting must be published in a local paper 30 days prior to the meeting. Public participation at VCP sites depends upon public interest and is specified in the consent order.

Public participation activities (hearing, meetings, etc.): Brownfields Program allows for public meetings. Meeting proceedings are recorded and documented. VCP utilizes public meeting and open house formats. RLF requires formal Community Relations Plan.

Statutory Authorities

Oklahoma Brownfields Voluntary Redevelopment Act (HB 2872, effective 6/14/1996), 27A OS §2–15–101 through 110.

General Information

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Web site: <http://www.tnrc.state.tx.us/permitting/remed/vcp/brownfields.html>

Program Description (VCP, brownfields, or related)

In Texas, many former industrial properties lie dormant or underutilized due to liability associated with real or perceived contamination. These properties are broadly referred to as brownfields. TCEQ in close partnership with EPA and other federal, state, and local redevelopment agencies, and stakeholders, is facilitating cleanup, transferability, and revitalization of brownfields through the development of regulatory, tax, and technical assistance tools.

Brownfields definition: No specific definition, but brownfields are described as properties with perceived contamination.

Program titles:

- Voluntary Cleanup Program (VCP)
- Innocent Owner/Operator Program (IOP)
- Brownfields Site Assessment Program

Liability relief provisions: After completion of the cleanup, parties will receive a Certificate of Completion (COC) from the TCEQ, which states that all non-responsible parties are released from all liability to the state for cleanup of areas covered. The IOP was created by House Bill 2776 of the 75th Legislature, and provides a certificate to an innocent owner or operator, under the Texas Health and Safety Code or Water Code, if their property has become contaminated as a result of a release or migration of contaminants from a source or sources not located on the property, and they did not cause or contribute to the source or sources of contamination. Like the VCP, the IOP can be used as a redevelopment tool or as a way to add value to a contaminated property by providing a certificate that confirms an innocent owner or operator is entitled to immunity from liability.

Financial incentives (grants, loans, tax provisions, etc.): None other than tax incentives described later.

Legislative or program site eligibility requirements:

Parties entering the VCP must submit an application, an environmental site assessment describing the contaminated area of concern, and a \$1,000 fee. Upon acceptance, the applicant must sign an agreement that describes the work schedule of events necessary to achieve cleanup, and confirms that the applicant has agreed to pay all VCP oversight costs. After completion of the cleanup, parties will receive a COC which states that all lenders and future landowners who are not responsible parties are released from all liability to the state for cleanup of areas covered by the certificate.

All sites are eligible for participation in the VCP, except the following:

- Sites subject to a permit concerning the remediation of the contaminant.
- Sites subject to a commission order concerning the remediation of the contamination.
- Sites listed on the National Priorities List (NPL) or formally proposed for listing.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): The Petroleum Storage Tank Remediation (PSTR) Fund is supported by a fee on gasoline and other fuels at bulk distribution facilities. The state uses this fund to reimburse responsible parties for the costs of corrective actions of releases from aboveground or underground storage tanks. Under the Brownfields Site Assessment Program, TCEQ will direct the completion of a limited number of federally funded site assessments for qualifying local governments and nonprofit groups in Texas. The Dry Cleaning Program is supported by fees on dry cleaning solvents and dry cleaning facilities. The program will perform corrective action of releases from dry cleaning facilities.

Tax incentives (abatements, credits, etc.): In addition to federal tax incentives (expense remediation expenditure), some local governments within the state offer ad valorem property tax abatements to attract brownfields cleanup and redevelopment. Senate Bill 1596 and House Bill 1239 of the 75th Texas Legislative Session added Section 312.211 to the Texas Tax Code. This section allows municipal or county taxing authorities to provide property tax relief for the development or redevelopment of certain brownfields properties that are located within a reinvestment zone and have been cleaned up through the VCP. To be eligible, the real property must: 1) be located in a reinvestment zone created under Section 311 of the Texas Tax Code; 2) not be in an improvement project financed by tax increment bonds; and 3) have received a COC from the VCP. The governing body must enter into a tax abatement agreement with the owner of the

brownfields property. The governing body is allowed to exempt from taxation: 1) not more than 100% of the value of the property in the first year covered by the agreement; 2) not more than 75% of the value of the property in the second year covered by the agreement; 3) not more than 50% of the value of the property in the third year covered by the agreement; and 4) not more than 25% of the value of the property in the fourth year covered by the agreement.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): Through its relationship with EPA, TCEQ is able to provide technical advice, education, and project partnering (including partnering with other federal and state agencies) for some brownfields redevelopment projects owned by local governments, or where the local government is playing a key role in the redevelopment. Other tools that may be available in the future to help pay for investigations and cleanups include the Brownfields Site Assessments and revolving loan funds/grants.

Program Elements

Technical Elements

Methods/standards/controls: The Texas Risk Reduction Program (TRRP) follows a Risk-Based Corrective Action process (RCBA) that allows for the use of engineering and institutional controls. A VCP applicant may use state developed cleanup levels or use site specific data to develop site specific cleanup levels.

Contaminants covered/excluded: All contaminants in soil and ground water OK, except those under the jurisdiction of the Texas Railroad Commission.

Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners): Institutional controls must be placed on a property record for a site that uses commercial/industrial risk-based standards, and for any property that relies on the use of physical control (e.g., cap or remediation system) to prevent exposure.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: May 1996

Costs to enter program or fees for service: \$1,000 application fee and applicant must reimburse TCEQ for the direct costs of oversight.

Funding source for administrative costs and staff: State remediation funds and EPA grant.

Cleanup Activities

Sites currently in VCP: Through March 24, 2004, the VCP had received 1,582 applications representing dry cleaners, manufacturing facilities, shopping centers, warehouses, auto-related businesses, and other commercial and industrial enterprises.

Sites completed under VCP: Of these sites, 739 have been issued final COC and 105 have received conditional certificates.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): After completion of cleanup and receiving COC, innocent owner or operator is immune to liability.

Public Participation

Public participation requirements (notice, comment periods, etc.): No information available

Public participation activities (hearing, meetings, etc.): No information available

Statutory Authorities

- *Texas Health and Safety Code*, Chapter 361, Sec. 361.602.
- *Voluntary Cleanup Program* 30 Texas Administrative Code §333.
- VCP 30 Texas Administrative Code §350.
- *Texas Risk Reduction Program* (TRRP) effective September 23, 1999 (24TexReg7415).